

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARTY J. THORNE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 227,164
<b>FLOWERS ELECTRIC, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>CNA INSURANCE COMPANIES</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent requested Appeals Board review of the preliminary hearing Order for Compensation dated October 27, 1997, and the preliminary hearing Nunc Pro Tunc Order for Compensation dated November 3, 1997, entered by Administrative Law Judge Floyd V. Palmer.

**ISSUES**

The issues raised by the respondent for Appeals Board review are as follows:

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of his employment with respondent.
- (2) Whether claimant gave respondent timely notice of accident as required by K.S.A. 44-520.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) The Administrative Law Judge ordered respondent to provide claimant with medical treatment, temporary total disability compensation, and payment of past medical expenses as authorized medical for a work-related injury occurring on or about August 8, 1997. Respondent contends claimant failed to meet his burden of proving it is more probably true than not that he injured his low back while working for respondent.

On June 12, 1997, claimant was employed by the respondent as an apprentice electrician. He testified, on that date at the conclusion of his shift, he bent over to pick up some tools and he felt severe pain in his lower back. After he got home, claimant contacted a chiropractor and received treatment from the chiropractor on June 12, 1997, and on June 13, 1997. Claimant testified the two chiropractic treatments reduced the pain and he was able to return to work but his low back remained symptomatic. Claimant returned to his regular work and was able to work through August 8, 1997. Claimant testified his back worsened as he performed his regular work activities with a specific lifting incident occurring in July 1997 and then another incident occurred as he was pulling wire for parking lot lights during the week ending Friday, August 8, 1997.

Claimant testified his back was very sore after he had completed his work on Friday, August 8, 1997. The soreness continued on Saturday, August 9, 1997, and culminated on Sunday, August 10, 1997, when he was unable to get out of bed. Because of his severe pain and discomfort, claimant contacted a chiropractor and received a treatment from the chiropractor on Sunday, August 10, 1997, and on Monday, August 11, 1997. Claimant testified on August 12, 1997, he was sitting on the bathroom floor watching his nine-month-old child take a bath when he shifted his weight causing such severe pain in his back that he could not get up off the floor. Claimant's wife called an ambulance and claimant was taken to the closest hospital, located in Burlington, Kansas.

Claimant was treated by the emergency room physician and then referred to orthopedic surgeon, Larry D. Cordell, M.D. Dr. Cordell diagnosed a lumbosacral spine sprain with some degenerative changes at L4-5 disc space. At the time of the preliminary hearing, Dr. Cordell had prescribed conservative treatment for claimant's injury and claimant remained off work.

The respondent argues that claimant's low-back injury was not caused by his work activities. The respondent points out that claimant did not require any medical treatment for what claimant characterizes as a worsening back condition from June 13, 1997, the date claimant received medical treatment for the June 12, 1997, injury, until August 10, 1997. Respondent also contends that claimant moved to a new house in July of 1997 and the lifting activities he performed during such move could have made claimant's low back worsen. Furthermore, respondent asserts claimant was in the process of bathing his child on August 12, 1997, and that activity and not his work caused his present back problems. However, claimant testified he was not bathing his child but was watching his child bath when his weight shifted and he was immobilized by the back pain.

The claimant testified in person at the preliminary hearing before the Administrative Law Judge. Thus, the Administrative Law Judge was in the unique position to assess his credibility. The Appeals Board finds claimant's credibility was very important in this case because the Administrative Law Judge had to believe claimant's testimony that he originally injured his back at work on June 12, 1997, and claimant's back worsened culminating to the point on August 12, 1997, he was unable to get up off the floor of the bathroom at home.

The Appeals Board, giving some deference to the conclusion of the Administrative Law Judge, finds claimant's testimony established that his current low-back condition was a direct and natural result of his work and not a new and separate accident that occurred on August 12, 1997, at home. See Gillig v. Cities Service Gas Co., 222 Kan. 369, 372, 564 P.2d 548 (1977).

(2) The Appeals Board concludes claimant gave notice of his accident to the respondent within ten days thereof as required by K.S.A. 44-520. This conclusion is supported by claimant's testimony that either his wife called his supervisor or his supervisor called the house and his wife notified the supervisor that claimant had to be transported to the hospital by ambulance because of his low-back injury. At that time, claimant also testified his supervisor was asked which doctor claimant was to contact for treatment. The supervisor did not know and indicated he would find out. Claimant did not hear back from the supervisor.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Compensation dated October 27, 1997, and the preliminary hearing Nunc Pro Tunc Order for Compensation dated November 3, 1997, entered by Administrative Law Judge Floyd V. Palmer should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1997.

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BOARD MEMBER

c: Patrick R. Nichols, Topeka, KS  
Timothy G. Lutz, Overland Park, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director